

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KYLE TOBIASON

Claimant

UNIVERSITY OF NORTHERN IOWA

Employer

APPEAL NO. 20A-UI-10309-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20

Claimant: Appellant (1R)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.4-5 – Reasonable Assurance

STATEMENT OF THE CASE:

Claimant filed an appeal from the August 4, 2020, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on October 12, 2020. The claimant did participate. The employer did participate through Lisa Frush. Employer's Exhibits 1-4 were admitted to the record.

ISSUES:

Whether the appeal is timely?

Whether employer gave claimant reasonable assurance of continued employment for the upcoming academic year?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the claimant's last known address of record on August 4, 2020. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 14, 2020. The appeal was not filed until August 24, 2020, which is after the date noticed on the disqualification decision. Claimant stated he never received the decision and that was why he was late appealing it.

On or around May 22, 2020 claimant was sent an IWD decision on another matter (ref 01) denying him benefits, as he was still working the same hours at the same wages as he had previously worked. This made him not able and available through the academic year. The academic year ended at or around the time claimant received this decision. Claimant did not appeal the decision.

Claimant filed a subsequent request for benefits. On August 4, 2020 he was allowed benefits, as he was eligible as a result of other employment but not eligible through UNI, as they are an educational institution that gave claimant a reasonable assurance of ongoing work during the academic year. Claimant appealed this matter. Claimant acknowledges that he does have a valid contract from employer that would limit his ability to receive benefits, but further questions

why his benefits were locked after the date of school letting out for the summer. The school year ended on May 13, 2020 and restarted on August 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The ten calendar days for appeal begin running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal is deemed to have been timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code section 96.4(5)b provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

5. Benefits based on service in employment in a nonprofit organization or government entity, defined in section 96.19, subsection 18, are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the same basis of other service subject to this chapter, except that:

b. Benefits based on service in any other capacity for an educational institution including service in or provided to or on behalf of an educational institution while in the employ of an educational service agency, a government entity, or a nonprofit organization, shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or terms, if the individual performs the services in the first of such academic years or terms and has reasonable assurance that the individual will perform services for the second of such academic years or terms. If benefits are denied to an individual for any week as a result of this paragraph and the individual is not offered an opportunity to perform the services for an educational institution for the second of such academic years or terms, the individual is entitled to retroactive payments of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this paragraph.

Iowa Admin. Code r. 871-24.51(6) provides:

School definitions.

(6) Reasonable assurance, as applicable to an employee of an educational institution, means a written, verbal, or implied agreement that the employee will perform services in the same or similar capacity, which is not substantially less in economic terms and conditions, during the ensuing academic year or term. It need not be a formal written contract. To constitute a reasonable assurance of reemployment for the ensuing academic year or term, an individual must be notified of such reemployment.

In this matter, claimant did have a reasonable assurance that he would be rehired for the 2020-2021 school year, as he had signed a contract. He is not eligible for unemployment benefits through this employer, although he may be eligible for benefits through other employment he has held. The previous decision (Reference 01) entered on May 22, 2020 that denied benefits based on working the same hours is to be examined by the benefits bureau to determine if that decision is in effect after the school year which ended on May 13, 2020.

DECISION:

The August 4, 2020, reference 02, decision is affirmed. Although the appeal in this case was timely filed, the decision of the representative remains in effect, as claimant did have a reasonable assurance that he would be rehired.

Claimant is able to receive benefits, as he has additional wages earned outside of his educational employment. The account of employer is not to be charged should claimant be eligible for benefits through other employment.

This matter is remanded to the benefits bureau for a determination as to whether the (reference 01) decision is still in effect after the ending of the academic year on May 13, 2020.



Blair A. Bennett
Administrative Law Judge

October 14, 2020
Decision Dated and Mailed

bab/sam